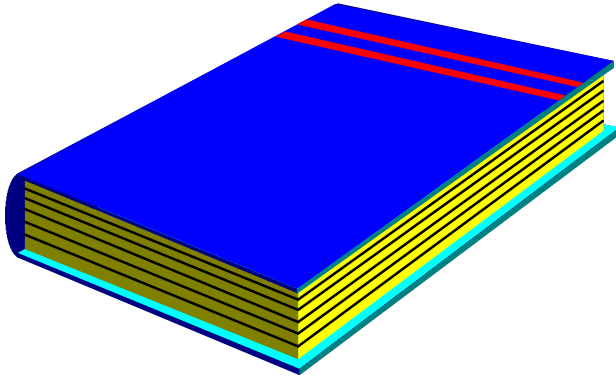


Summary of Consumer Credit Laws



Consumer credit transactions are regulated both at the Federal and the State level. Some of the Federal laws influencing the credit industry are:

Federal Laws

- ◆ The Federal Consumer Credit Protection Act
- ◆ [Truth in Lending Act](#)
- ◆ [Fair Credit Reporting Act](#)
- ◆ [Equal Credit Opportunity Act](#)
- ◆ [Fair Credit Billing Act](#)
- ◆ [Right to Financial Privacy Act](#)
- ◆ [Consumer Leasing Act](#)
- ◆ [Fair Debt Collection Practices Act](#)
- ◆ Unsolicited Credit Card Act
- ◆ [The Bankruptcy Reform Act of 1978](#)

Web Sites for Acts and Other Information

Information on these laws on our Web site.	Act Web Sites
• <u>The Federal Consumer Credit Protection Act</u>	http://www.access.gpo.gov/nara/cfr/waisidx_99/16cfr444_99.html
• <u>Truth in Lending Act</u>	http://www4.law.cornell.edu/uscode/15/1691.html
• <u>Fair Credit Reporting Act</u>	http://www.ftc.gov/os/statutes/fcra.htm
• <u>Equal Credit Opportunity Act</u>	http://www4.law.cornell.edu/uscode/15/1691.html
• <u>Fair Credit Billing Act</u>	http://www.ftc.gov/os/statutes/fcb/fcb.pdf
• <u>Right to Financial Privacy Act</u>	
• <u>Consumer Leasing Act</u>	http://www4.law.cornell.edu/uscode/15/1667.html
• <u>Fair Debt Collection Practices Act</u>	http://www.ftc.gov/os/statutes/fdcpa/fdcpact.htm
• <u>Electronic Fund Transfer Act</u>	http://www4.law.cornell.edu/uscode/15/1693.html
• <u>The Bankruptcy Reform Act</u>	
• <u>Real Estate Settlement Procedures Act</u>	http://www4.law.cornell.edu/uscode/12

While there is considerable variation among State laws governing consumer credit transactions, most are based on Federal laws and various versions of State laws covering several standard areas. Some of those areas are as follows:

State Laws

- ◆ The Uniform Consumer Credit Code - Indiana Uniform Consumer Credit Code, <http://www.dfi.state.in.us/conscredit/IUcode.html>
- ◆ Usury or rate ceiling laws
- ◆ Consumer loan acts
- ◆ Mortgage lending acts
- ◆ Mortgage banker and broker acts
- ◆ Secondary mortgage acts
- ◆ Retail installment sales acts
- ◆ Seller and lender credit card acts

- ◆ Home solicitation sales acts
- ◆ Home improvement contracts acts
- ◆ Rental purchase agreement acts

Explanation of laws

For a full explanation of the relevant laws in the jurisdiction(s) in which you do business you can consult:

- ◆ Legal counsel
- ◆ State attorney general office
- ◆ State banking commission, consumer credit or financial institutions departments/commissions
- ◆ Trade associations, such as the International Credit Association, the Associated Credit Bureaus, local credit associations, national or state bankers associations, savings associations, mortgage banker associations, national and state consumer finance associations, or national or state retail merchants associations.

Note: To help both business and consumers understand consumer credit laws, businesses should encourage financial trade associations and offices of consumer protection to compile and distribute summaries and comparisons of State laws governing consumer credit transactions.

Federal Law Summaries

All consumer credit businesses should be aware of the Federal laws summarized below. These summaries are not, however, intended to serve as a substitute for legal counsel and a thorough understanding of the laws themselves.

Truth in Lending Act (TILA) (effective 1969; amended by Unsolicited Credit Card Act, effective 1970; amended by the Truth in Lending Simplification Act, effective 1982; amended by the Home Equity Loan Consumer Protection Act, effective 1989; amended by the Fair Credit and Charge Card Disclosure Act, effective 1989; amended by the Home Ownership and Equity Protection Act, effective October 1995).

This act and the acts which amended or added to its provisions were primarily enacted to prevent abuses in consumer credit cost disclosures and to require uniformity in such disclosures throughout the credit industry by making terms of credit known to consumers.

The specific provisions of the act are implemented by **Regulation Z**. Regulation Z explains in great detail who and what is covered by the regulation and gives the specific disclosure and other requirements that have to be met for open-end and closed-end credit transactions. It should be noted that disclosures of the costs involved in credit card plans offered by mail, telephone or by applications distributed to the general public are subject to the disclosure requirements laid down in Truth in Lending and Regulation Z.

The act covers among others any person who regularly extends credit used primarily for personal, family or household purposes if the credit is subject to a finance charge or payable by a written agreement in more than four installments. The act also covers advertising of such credit transactions. Credit transactions of over \$25,000 are exempt from the act (unless there is a security interest taken in real property or a mobile home).

Specific and detailed disclosure requirements exist for all the various types of consumer transactions which fall under the disclosure mandates and prohibitions. For example:

- ◆ Open-end credit disclosures cover credit cards, charge cards and open-end consumer credit transactions. Under such circumstances, the act requires certain disclosures before the initial disclosure statement for credit and charge card applications and solicitations and it requires certain early disclosures and prohibits certain practices for home equity lines of credit. In addition, an initial disclosure statement, disclosures on monthly billing statements and sometimes disclosures on subsequent statements are usually required on open-end transactions. Each type of statement has its own mandated list of disclosures. Particular provisions also require that a cardholder be given 15-days prior notice of a change in terms. All disclosures must be made clearly, conspicuously and in writing.
- ◆ A miscellaneous provision prohibits the issuing of a credit card unless it is in response to an oral or written application or as a card renewal. This does not prohibit creditors from distributing unsolicited applications for credit or from issuing renewals or substitutes for a card previously accepted by the consumer.
- ◆ A provision provides for a statutory \$50 maximum limit on the amount of money a cardholder is required to pay for the unauthorized use of a card before the card issuer has been notified by the consumer.
- ◆ Closed-end credit disclosures are also carefully delineated and regulated under the act and its Regulation Z. The law requires disclosures to be made clearly, conspicuously, in writing and in a form that the consumer may keep and read prior to the loan closing. If the disclosures are incorporated into the loan agreement they must be separated from all other loan details; for example, they may be placed in a boxed section on the form or be separated by bold print dividing lines (often referred to as the "Federal Box").
- ◆ Additional disclosures were mandated in the Home Ownership and Equity Protection Act of 1994 (effective approximately October, 1995). Under this new act, creditors must make additional disclosures and comply with prohibitions against certain practices on closed-end home equity loans meeting specific triggers relating

to APR or points and fees.

- ◆ The act also requires advertisers of consumer credit to clearly and conspicuously provide certain information if they use specific triggering terms in their credit ads. The act requires that the credit terms advertised actually be available.

Note: The requirements of the Truth in Lending Act and Regulation Z are complex and detailed, therefore, it is recommended that those who are regulated by the act and its regulation refer questions to an attorney who is knowledgeable about the act, all of its provisions, and the regulation.

Real Estate Settlement Procedures Act (RESPA) (effective 1974) requires home mortgage lenders to:

- ◆ Provide loan applicants with good faith estimates of the costs of settlement services (costs related to the making of a real estate loan).
- ◆ Make disclosures when the lender refers settlement business to a company affiliated with the lender.
- ◆ Provide loan applicants with disclosures regarding the possible transfer of the servicing of loans (both the lender and the new servicer must provide notices when servicing is transferred).
- ◆ Provide disclosure of actual costs and charges for settlement services at the loan closing.
- ◆ Not give any fee or kickback to any person for providing settlement services.

Note: Effective August 1994 RESPA also applies to second mortgage loans.

Federal Trade Commission Rule on Preservation of Consumers' Claims and Defenses (effective 1976), the "Holder-in-Due Course Rule", requires sellers of goods and services to include a clause in certain credit contracts which preserves all the sale related claims and defenses (such as breach of contract, breach of warranty, misrepresentation or fraud) which the consumer could assert against the seller so that such claims and defenses may also be asserted against future holders of the consumer credit contract.

This rule does not apply to cash purchases of consumer goods and services, real estate transactions nor purchases by businesses or associations. It also does not govern credit card transactions which are covered by the Fair Credit Billing Act.

Federal Trade Commission Credit Practices Rule (effective 1985) defines certain unfair credit practices for a seller or creditor executing an agreement.

The rule declares it an unfair credit practice to take a contract containing a confession of judgment, a waiver of exemptions granted by state law, a wage assignment or a non-possessory security interest in household goods other than a purchase money security interest. The rule also prohibits certain acts or practices in which the creditor directly (or indirectly) misrepresents the nature or extent of a cosigner's liability. The rule requires that before a creditor can obligate a co-signer, the co-signer must be informed of the nature of his or her liability as a co-signer. The rule also provides a specific notice to be given to co-signers prior to executing an agreement.

The required notice reads as follows: "You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility. You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount. The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower such as suing you, garnishing your wages, etc. If this debt is ever in default that fact becomes a part of your credit record.

This notice is not the contract that makes you liable for the debt."

Note: Creditors are also prohibited from charging multiple late fees for one late payment.

Fair Credit Reporting Act (FCRA) (effective 1971, amended 1978, 1989, 1992, 1994 and 1996) requires:

- ◆ Creditors to notify consumers of the name and address of credit reporting agencies (credit bureaus) whose reports were used as a basis for adverse credit decisions.
- ◆ Credit reporting agencies, upon request: To disclose to consumers the nature and substance of information in their credit bureau records; to reinvestigate disputed information and make corrections; and, to allow consumers to file their explanations if reinvestigations do not resolve disputes.
- ◆ Credit reporting agencies to notify recent recipients (as specified by the consumer) of the credit reports, of corrections that may have been made, or, in certain instances, the consumer's side of the story, and to include this material in future reports.
- ◆ Credit reporting agencies to exclude from consumer reports adverse credit records more than seven years old (ten years for bankruptcies.)
- ◆ Credit reporting agencies to furnish reports only to those who have a Permissible purposes for the information.

Note: The FCRA was amended in 1992 and imposes an obligation upon a credit reporting agency to include overdue child support in a consumer report, provided that

information is reported to the agency by a party charged with the collection of the child support.

Equal Credit Opportunity Act (ECOA) (effective 1975; amended 1977, 1988 and 1991) prohibits creditors from:

- ◆ Discriminating against credit applicants because of sex, race, color, national origin, age, marital status, religion or because a consumer's income comes from a public assistance source (e.g., social security or disability benefits). The act does permit the use of ages as a variable in an empirically derived, statistically sound, credit scoring system provided that the age of an elderly applicant (62 or over) is not assigned a negative factor or value. In addition, creditors may not discount or refuse to consider income because it comes from retirement benefits, part-time employment or alimony/child support.
- ◆ Denying credit because the consumer, in good faith, exercised rights under the Consumer Credit Protection Act (such as disputing a credit card bill under the Fair Credit Billing Act or a credit bureau report under the Fair Credit Reporting Act.)
- ◆ Failing to provide written notice of adverse action within specified time frames when a consumer's application is denied or when certain other adverse actions are taken. The notice must either disclose the reasons for the denial or adverse action or inform the consumer of the right to obtain those reasons.

Fair Credit Billing Act (FCBA) (effective 1975) applies only to open-end credit transactions. Among other things, the act specifies a step-by-step procedure for error resolutions. The procedure is as follows:

- ◆ The consumer must give written notice of a billing error, in a letter, within 60 days of receiving the bill in question.
- ◆ The creditor must respond within 30 days and resolve the dispute within two billing cycles, but not longer than 90 days. Within 90 days, the creditor must either explain why the bill is correct or correct the error.
- ◆ During the resolution period no collection activity is permitted on the disputed amount and no finance charges may be collected as well. The account may not be reported as delinquent, nor can it be closed nor restricted because of the consumer's failure to pay the disputed amount, and/or related charges.
- ◆ If the consumer still believes the billing to be in dispute after the resolution period, the consumer must again notify the creditor in writing. During this period, the creditor may not report the account delinquent without also reporting that the amount is in dispute. The creditor must also report to the consumer the name and address of each person to whom the creditor is reporting information about the delinquency.

- ◆ The creditor must also report how the matter was resolved, to anyone who received a report on the delinquency.
- ◆ Creditors must include an address on periodic statements to which consumer billing inquiries can be addressed.

Right to Financial Privacy Act (RFPA) (effective 1979) provides privacy protection to customers of financial institutions when the Federal government is seeking financial record information about an institution's customers. The act defines a financial institution as any office of a bank, savings bank, other type of regulated financial institution or a Card issuers (retailers who issue cards must comply).

The act prohibits government authorities from gaining access to information contained in the financial records of any customer of a financial institution or card-issuer, unless:

- ◆ The customer has authorized access to the customer's records in a written statement as set down in the act.
- ◆ The financial records are disclosed in response to an administrative subpoena. The customer must be mailed a copy of the subpoena, giving the customer the right, within 10 days of receiving the notice, of filing a motion to prevent disclosure.
- ◆ The financial records are disclosed in response to a search warrant.
- ◆ The financial records are disclosed in response to a judicial subpoena. A copy of the subpoena must have been served on the customer on or before the date on which the financial institution was served.
- ◆ In the absence of a subpoena, the financial records are disclosed in response to a formal written request which must meet guidelines specified in the act. A government agency may gain access to a consumer's financial records without notice to the consumer if the agency is investigating the financial institution, not the consumer.

Consumer Leasing Act (CLA) (effective 1976, amended 1997) requires certain disclosures about consumer leases. The act requires leasing companies to do the following in writing:

- ◆ Give a brief description of the leased property.
- ◆ Give an itemization of amount due at lease signing or delivery.
- ◆ Disclose the total amount of the initial payment required, number of payments, amount of each payment, due dates and total amount of payments.
- ◆ Disclose how your monthly payment is determined.
- ◆ Disclose in writing the total amount of payments under the lease, including, the amount of the security deposit (if required), monthly payments and additional

charges, such as for licenses or taxes.

- ◆ Disclose the total amount of official fees and all other charges, including penalties for late payments or delinquencies.
- ◆ Identify any express warranty and the party responsible for the product's maintenance and service.
- ◆ Provide a description of any security interest.
- ◆ State whether the customer has the option to purchase the leased property and provide certain related information.
- ◆ Disclose early termination rights, if any.
- ◆ Disclose the customer's liability for the difference between the estimated value of the property and its realized value to the lessor at early termination or the end of the lease (plus customer appraisal and other rights).
- ◆ Disclose the terms and conditions of the transaction, including guarantees, required insurance and any consumer liability at the end of the lease.
- ◆ Limit penalties or other charges for delinquency, default or early termination, to amounts which are reasonable in light of the anticipated or actual harm caused by the delinquency, default or early termination.

Note: The act also requires advertisers of consumer leases to clearly and conspicuously provide certain information if those advertisers use specific triggering terms in their lease ads. The act also requires that the lease terms advertised actually be available.

Fair Debt Collection Practices Act (FDCPA) (effective 1978, amended 1986) applies to everyone who collects consumer debts for someone else, including attorneys who collect consumer debts. While creditors collecting their own accounts are excluded from the act, most creditors follow the act's mandates and prohibitions in the interest of using sound and fair business practices. Debt collection prohibitions under the act include:

- ◆ Threatening or using violence.
- ◆ Using obscene or profane language.
- ◆ Publishing a list of consumers who allegedly refuse to pay their debts.
- ◆ Causing a telephone to ring, or engaging a debtor in telephone conversation, repeatedly or continuously.

The act also places the following restrictions on debt collector contacts:

- ◆ Contacts should be limited to between 8:00 a.m. and 9:00 p.m.
- ◆ A debtor may be contacted at work unless the collector knows or has reason to know that the employer prohibits an employee from receiving such calls or that it is inconvenient for the debtor to receive debt collection calls at work.
- ◆ If a debtor is represented by an attorney, a collector cannot communicate with the debtor unless the attorney grants permission or fails to respond to the collector's communications within a reasonable time.

Note: In addition, the act specifies: which third-parties can be contacted about a debtor for debt collection; how and when collectors can communicate to third-parties for debtor location information; and, what acts are considered to be false, misleading or unfair.

Electronic Fund Transfer Act (EFTA) (effective 1979) applies to electronic fund transfers (EFTs) involving asset accounts, including the use of automatic teller machines (ATMs) to access and deposit to accounts, telephone transfer systems, direct deposits, and automatic preauthorized payments to third parties. Some of the act's provisions are as follows:

- ◆ Prohibits issuance of unsolicited access devices such as ATM cards, unless the access devices cannot be used for EFTs, until validated by the financial institution, at the consumer's request.
- ◆ Limits consumer liability to \$50 for unauthorized transfers involving an access device or card, if the financial institution is notified within two business days from the date the consumer discovers the loss of a card.
- ◆ Limits consumer liability for unauthorized transfers involving an access device or card, to \$500 if the financial institution is notified more than two days after the loss of a card. However, consumer liability is unlimited if the financial institution is not notified within 60 days after the consumer's receipt of a periodic statement.
- ◆ Provides for correction or recrediting of an account after oral or written notice of errors is received.
- ◆ Makes a consumer liable for billing errors if the consumer fails to notify the financial institution within 60 days of receiving a statement containing an error, unless there are mitigating circumstances that prevent the consumer from notifying the institution.
- ◆ Allows financial institutions 45 calendar days, after notice from a consumer, to resolve an error appearing on a periodic statement. If the error cannot be resolved within ten business days, the account must be provisionally recredited until the investigation is completed.
- ◆ Establishes a consumer's right to issue a stop payments for preauthorized transfers.
- ◆ Prohibits creditors from requiring the use of EFTs to repay loans as a condition of credit although a creditor may give a cost related discount for EFTs. Employers and

providers of government benefits may require the use of EFTs, but must give consumers the choice of financial institutions to be used.

The Bankruptcy Reform Act (effective 1979; amended 1984, 1986 and 1994.) This act is known as the Bankruptcy Code and replaces the Bankruptcy Act of 1898. Different types of bankruptcy are named after chapters of the Bankruptcy Code. The most common types of bankruptcy are as follows:

- ◆ Chapter 7-a "straight" bankruptcy under which assets are liquidated in order to pay creditors.
- ◆ Chapter 11-a chapter which provides primarily for a business bankruptcy, so that a business can Reorganize through a plan to pay all or part of its business' debts to its creditors.
- ◆ Chapter 13-a chapter for consumers with a regular income. Under Chapter 13 bankruptcies consumers develop plans to pay all or part of their debts to their creditors over a specified time period.

Note: Upon the filing of a bankruptcy petition, an Automatic Stays provided for by the Bankruptcy Code requires creditors to immediately stop all efforts to collect a debt, take possession of collateral, enforce a lien, set off a debt or collect receivables of a debtor. Any relief from these restrictions must be requested of the bankruptcy court by the creditor. Creditors with further questions on bankruptcy should contact their local attorney or the bankruptcy court.

SOURCES OF ADDITIONAL INFORMATION

Consumer Credit Laws

Books

These books are often available at public libraries.

The Ultimate Credit Handbook: How To Double Your Credit, Cut Your Debt, and Have A Lifetime Of Great Credit by Geri Detweiler. Plume Book, (1993). \$10.95. A comprehensive guide to credit with a focus on the credit laws and consumer rights under major credit protection laws.

You and Your Credit: Tools For Understanding and Repairing Your Own Credit by Darryl R. White. Pyramid, (1994). \$29.95. An easy-to-read manual which gives in-depth coverage of obtaining and restoring credit, plus consumer legal rights.

Pamphlets

Resources that have a bold code inside a parentheses refer to sources provided at the end of this list. To order an item, contact the source using the address or phone number provided.

Consumer Handbook to Credit Protection Laws. (FRB) (1993). Explains how consumer credit laws can help you shop for credit, apply for it, keep a positive credit record, and, if need be, complain about an unfair deal. Free, 44 pages.

Consumer Rights. (FFIEC) (1990). Summarizes the federal laws and regulations covering services offered by financial institutions. Provides tips on how and where to file complaints. Free, 12 pages.

Credit Billing Errors? Use The Fair Credit Billing Act. (FTC) (1992). What to do to correct a billing error and how the creditor is required to respond. Free, 2 pages.

Equal Credit Opportunity. (FTC) (1992). A checklist of rights when applying for credit under the Equal Credit Opportunity Act. Also includes where to complain if discrimination is suspected. Free, 9 pages.

Fair Credit Billing. (FTC) (1992). Explanation of consumer rights under the Fair Credit Billing Act and how to deal with billing errors. Covers credit cards, charge accounts and overdraft checking. Free, 8 pages.

Fair Credit Reporting. (FTC) (1992). A summary of consumer rights under the Fair Credit Reporting Act in a question and answer format. Free, 2 pages.

Fair Credit Reporting Act. (FDIC). Explains consumers' rights under the Fair Credit Reporting Act. Free, 5 pages.

Fair Debt Collection. (FTC) (1992). An explanation in question and answer format of the Fair Debt Collection Act, including what a debt collector can or cannot do. Free, 6 pages.

Fix Your Own Credit Problems and Save Money. (FTC) (1992). A short and simple explanation of what to do when credit is denied or when paying bills is a problem. Free, 2 pages.

How to Dispute Credit Report Errors. (FTC) (1994). Explains how to obtain a copy of a credit report and how to dispute errors, includes a sample dispute letter. Free, 6 pages.

Solving Your Credit Card Billing Questions. (BHA) (1995). Specifies the consumer's rights and responsibilities in the case of billing disputes. It also describes special protections for consumers who have bought inferior merchandise with a credit card. \$1.00, 5 pages.

Truth in Lending: What It Means to You. (FDIC). Describes federal protections pertaining to the cost of credit, theft and advertising. Free, 4 pages.

Sources

BHA

Bankcard Holders of America
524 Branch Drive
Salem, VA 24153

FDIC

Federal Deposit Insurance Corporation
Office of Consumer Affairs
550 17th Street, NW, Room F-130
Washington, DC 20429
Phone: (800) 424-5488

FFIEC

Federal Financial Institutions
Examination Council
1776 G Street, NW, Suite 850B
Washington, DC 20006
Phone: (202) 357-0177

FRB

Board of Governors of the Federal
Reserve System
Publication Services
Washington, DC 20551
Phone: (202) 452-3244

FTC

Federal Trade Commission
Bureau of Consumer Protection
Pennsylvania Avenue & 6th Street, NW
Washington, DC 20580
Phone: (202) 326-2222
FTC Consumer Line on Web: <http://www.ftc.gov/>

For further credit education information or to suggest resource list additions, call or fax
NICE between 8 a.m. and 5 p.m. Eastern time, Monday through Friday at:
Phone: (313) 487-2292 Fax: (313) 487-7153

The NICE home page address is: <http://www.emich.edu/public/coe/nice>

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